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SERVICE DATE – MARCH 22, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT – IN POLK COUNTY, IA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: March 21, 2002

On February 8, 2002, Mid-America Railroad, L.L.C. (MAR), filed an appeal to the decision in this proceeding served on January 30, 2002, in which the Director of the Office of Proceedings (Director) rejected an offer of financial assistance (OFA) filed by MAR to purchase the line of railroad of the Union Pacific Railroad Company (UP) described below. We will grant the appeal and find MAR to be financially responsible.

BACKGROUND

By decision served on January 16, 2002, we granted the abandonment by UP of a 3.72-mile line of railroad known as the Bell Industrial Lead, extending from milepost 221.10 near SE 18th Street to milepost 217.38 near SW 30th Street in Des Moines, Polk County, IA (the line), subject to employee protective, environmental, and historic preservation conditions. The abandonment was scheduled to become effective on February 15, 2002, unless an OFA was filed by January 25, 2002.

On January 25, 2002, MAR, a wholly owned subsidiary of Mid-America Development Company (Mid-America), timely filed an OFA, under 49 U.S.C. 10904 and 49 CFR 1152.27, stating that it has more than sufficient financial resources to meet its obligations and to purchase the entire line for \$5,000. MAR explained the disparity between its offering price and UP's estimated net liquidation value for the line. However, MAR did not make the required demonstration that it is financially responsible and, accordingly, its OFA was rejected.

In its appeal, MAR asks that we reverse the Director's decision and find MAR to be financially responsible, based on supplemental information¹ submitted under seal.² UP filed a reply in opposition to MAR's appeal on March 4, 2002.³

DISCUSSION AND CONCLUSIONS

As stated in the January 30 decision, an OFA to acquire a line for continued rail service need not be detailed, but the supporting information must be sufficient to show that the offeror is financially responsible and that its offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). While our rules indicate that the information submitted in support of an OFA should be included in the OFA itself, under appropriate circumstances, we construe our rules liberally. See 49 CFR 1100.3. Here, because Mid-America has been an active participant throughout the abandonment process and is the owner of adjacent property that would benefit from continued rail service, we will accept into evidence the new material submitted by MAR. According to the appeal, MAR was formed by Mid-America specifically to make an offer for the line. MAR filed financial documents of MAG and its subsidiaries to show that, as a wholly owned subsidiary of a stable entity, it was financially responsible. While a more affirmative statement as to MAG's and Mid-America's commitment would have been helpful, we anticipate that MAG through Mid-America will financially support MAR in its endeavor to provide rail service. Accordingly, we find MAR financially responsible.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ This supplemental information contained in Exhibit B of its appeal consists of the financial statements of Mid-America Group, LTD (MAG), and its subsidiaries. While not fully explained, it appears that MAR, and its parent Mid-America, are companies within MAG.

² Concurrently with its filing of this appeal, MAR filed a motion for a protective order to safeguard the confidentiality of the information contained in Exhibit B. On February 12, 2002, UP filed a reply to MAR's motion and a petition for an extension of time to file its reply to the appeal. UP's petition and MAR's motion were granted in a decision served on February 21, 2002.

³ UP contends that MAR has not demonstrated its financial responsibility because the financial statements submitted consist of statements for MAG and its subsidiaries, not those of MAR. UP further argues that MAR's status as a limited liability company insulates MAG from MAR's obligations and liabilities, thereby making MAG's resources irrelevant. Finally, UP contends that MAR should have provided the financial information in its OFA and argues that the offer is not reasonable.

It is ordered:

1. The appeal is granted. MAR is found to be financially responsible and its OFA is found to be reasonable to initiate negotiations between the parties.

2. UP may not consummate this abandonment until the OFA process is complete.⁴

3. If MAR and UP cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before April 22, 2002.

4. Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which is currently \$15,600, and as of April 8, 2002, will be \$16,700. An original and 10 copies of the request should be submitted along with the filing fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Case Control Unit, Request to Set Terms and Conditions" in the lower left hand corner.

5. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment to become effective.

6. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

⁴ Other outstanding conditions would also have to be satisfied before any abandonment consummation could occur.